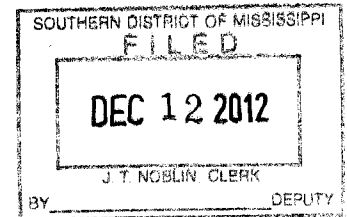


IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



LIBARDO A. BUITRAGO

PLAINTIFF

V.

CIVIL ACTION NO. 3:12 CV 843 DPJ-FKB

ALLADIN CONSTRUCTION COMPANY, INC.

DEFENDANT

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COMPLAINT  
JURY TRIAL DEMANDED

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COMES NOW the Plaintiff, Libardo Buitrago, by and through his counsel, Louis H. Watson, Jr., and files this action to recover damages for violations of his rights under the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act of 1993, as amended, and the Equal Retirement Income Security Act of 1974, as amended, against Defendant, Alladin Construction Company, Inc. In support of this cause, the Plaintiff would show unto the Court the following facts to-wit:

PARTIES

1. The Plaintiff, Libardo A. Buitrago, is an adult Hispanic male resident of Harrison County, Mississippi, residing at 15019 Cedar Springs Drive, Biloxi, Mississippi 39532.
2. The Defendant, Alladin Construction Company, Inc., is Plaintiff's former employer and is a Mississippi corporation registered under the laws of Mississippi. Defendant may be served with process in this cause by serving its registered agent, Thomas G. Little, Sr., 1023 Callivet Street, Biloxi, Mississippi 39111.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction.

4. This Court has personal jurisdiction over the Defendant and venue is proper in this Court.

5. Plaintiff timely filed a Charge of Discrimination with the EEOC, a true and correct copy of which is attached hereto as Exhibit "A." On October 12, 2012, the EEOC issued a Dismissal and Notice of Rights, a true and correct copy of which is attached hereto as Exhibit "B." Plaintiff timely files this Cause of Action within ninety (90) days of receipt of his Dismissal and Notice of Rights.

### **STATEMENT OF THE FACTS**

6. Plaintiff began work for Defendant in 1999.

7. On July 10, 2006, Plaintiff suffered a heart attack while at work. Plaintiff was on medical leave for three months.

8. On May 15, 2009, Plaintiff had surgery for prostate cancer.

9. On March 23, 2011, Plaintiff had severe lower back pains while at work. After work, Plaintiff went to the doctor. The doctor sent Plaintiff to have a CT scan and was diagnosed with lower lumbar strain.

10. Plaintiff returned to work on March 28, 2011. While at work Plaintiff had a recurrence of lower back pain. Plaintiff went back to the doctor and was prescribed bed rest. Plaintiff was released to go back to work on April 5, 2011.

11. On April 8, 2011, Plaintiff was laid off of work. The reason given to Plaintiff was "the company's lack of work".

12. In April, 2011, Defendant issued a newsletter which Plaintiff received outlining a dozen new jobs the Defendant had contracted.

13. Defendant's actions constitute a willful and direct violation of the Americans with Disabilities Act, the Family and Medical Leave Act and the Equal Retirement Income Security Act.

### **CAUSES OF ACTION**

#### **COUNT I - VIOLATION OF THE ADA**

14. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 13 above as if fully incorporated herein.

15. The Defendant violated the ADA by terminating Plaintiff's employment in response to his disability and/or perceived disability.

16. The unlawful actions of the Defendant complained of above were intentional, malicious, and taken in reckless disregard of the statutory rights of Plaintiff.

17. As a direct and proximate result of Defendant's violation, Plaintiff suffered and continues to suffer lost earnings and benefits, emotional pain, suffering, professional and personal embarrassment, humiliation, loss of enjoyment of life, and inconvenience.

#### **COUNT II - VIOLATION OF FMLA - RETALIATION**

18. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 17 above as if fully incorporated herein.

19. Defendant unlawfully retaliated against Plaintiff by terminating Plaintiff for taking FMLA approved time off.

#### **COUNT III - VIOLATION OF ERISA**

20. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 19 above as if fully incorporated herein.

21. Defendant unlawfully discriminated against Plaintiff and discharged Plaintiff who was a participant in Defendant's health insurance plan because of his disability.

22. Such actions constitute of violation of Section 510 or ERISA and entitle Plaintiff to reinstatement, including retroactive reinstatement of health insurance benefits, back pay, a surcharge, and attorney fees.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court cause service to issue in the cause upon the Defendant and that this matter be set for trial. Upon trial by jury thereon, Plaintiff prays that the following relief be granted:

- a. Damages resulting from Defendant's actions including: reinstatement or front pay in lieu of reinstatement, unpaid bonuses, unpaid pay increases, unpaid vacation pay, unpaid back pay, lost benefits, and other pecuniary losses proximately caused by Defendant's unlawful conduct;
- b. Compensatory damages against Defendant in an amount to be determined by the jury;
- c. Liquidated damages against Defendant;
- d. Punitive damages against Defendant in an amount to be determined by the jury;
- e. All costs, disbursements, pre-judgment interest, post-judgment interest, expert witness fees and reasonable attorney's fees allowed under actions brought pursuant to the ADA, FMLA and ERISA; and
- f. Such further relief as is deemed just and proper.

THIS the 10th day of December, 2012.

Respectfully submitted,

LIBARDO A. BUITRAGO, PLAINTIFF

By: 

Louis H. Watson, Jr. (MB# 9053)

Nick Norris (MB#101574)

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